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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,404	11/03/2003	Benjamin Wilken	12221-020001	6346
26161 7590 03/11/2009 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
SQUIRES, BRETT S				
ART UNIT		PAPER NUMBER		
2431				
NOTIFICATION DATE		DELIVERY MODE		
03/11/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/701,404	Applicant(s) WILKEN ET AL.
Examiner BRETT SQUIRES	Art Unit 2431

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 20 February 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 5, 18 and 32.
Claim(s) rejected: 1-4, 6-17, 19-31, and 33-36.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Christopher A. Revak/
Primary Examiner, Art Unit 2431

In response to the applicants' argument that the type of variable C3 is defined in the specification as new host pairs over the second update period, the examiner respectfully points out that where possible claims are to be complete themselves. In the present case the type of variable C3 is can be practically defined by words, thus making the incorporation by reference to the specification for the type of variable C3 is unnecessary. Claims must under modern practice stand alone to define the invention and incorporation by express reference to the specification and/or drawings is not permitted except in very limited circumstances. See *Ex parte Fressola* 27 USPQ2d 1608, 1609 (Bd. Pat. App. & Inter. 1993)

In response to the applicants' argument that the type of variable C4 and the type of variable C5 are defined in the specification respectively as a first threshold number host pairs and a first factor pertaining to the second update period, the examiner respectfully points out that where possible claims are to be complete themselves. In the present case the type of variable C4 and the type of variable C5 are can be practically defined by words, thus making the incorporation by reference to the specification for the type of variable C4 and the type of variable C5 are unnecessary. Claims must under modern practice stand alone to define the invention and incorporation by express reference to the specification and/or drawings is not permitted except in very limited circumstances. See *Ex parte Fressola* 27 USPQ2d 1608, 1609 (Bd. Pat. App. & Inter. 1993)

In response to the applicants argument that the host-pairs table disclosed by Pruthi does not possess the features of the claimed connection table, the examiner respectfully points out that the naming convention for a table of "a connection table," does not require any additional features for a table beyond that of an ordinary table. The examiner does note that independent claim 1 does require the table to store host-pair connections, but this limitation is satisfied by the host-pairs table disclosed by Pruthi (See fig. 14 ref. no. 1402 and paragraphs 90-93 and 115-116).

In response to the applicants argument that Pruthi does not disclose new host pairs added to a table over an update period, the examiner respectfully disagrees. Pruthi discloses creating a host-pairs table for displaying data collected and analyzed by a network monitor during each monitoring period of IP traffic (See paragraphs 90-93 and 115-116). The host-pairs table disclosed by Pruthi is newly created for each monitoring period of IP traffic and does not distinguish between host-pairs existing before the monitoring period of IP traffic and host-pairs created during the monitoring of IP traffic. Therefore, since the host-pairs table is newly created for each monitoring period of IP traffic, all host-pairs detected during each monitoring of IP traffic are considered new host-pairs for that particular monitoring period.

In response to the applicants argument that "the examiner is saying that Pruthi has a non-enabling disclosure," the examiner respectfully points out that stating features of Pruthi are inherently disclosed is not a statement that Pruthi has a non-enabling disclosure. The examiner further points out that a prior art reference provides an enabling disclosure and thus anticipates a claimed invention if the reference describes the claimed invention in sufficient detail to enable a person of ordinary skill in the art to carry out the claimed invention, proof of efficacy is not required for a prior art reference to be enabling for purpose of anticipation. *Impax Labs. Inc. v. Aventis Phram. Inc.*, 468 F.3d 1366, 1383, 81 USPQ2d 1001, 1013 (Fed. Cir. 2006)